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IN THE

Supreme Court of the United States

October Term, 1975

No. 74-1427

REUBEN L. ANDERSON-CHERNE, INC.,
Appellant,

vs.

THE COMMISSIONER OF REVENUE
OF THE STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF MINNESOTA

MOTION TO DISMISS AND SUPPORTING BRIEF

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MOTION TO DISMISS

The Commissioner of Revenue of the State of Minnesota, appellee herein, moves pursuant to Rule 16(1) (b) of the Rules of this Court to dismiss the appeal on the ground that it does not present a substantial federal question.

BRIEF IN SUPPORT OF MOTION

In its Jurisdictional Statement appellant has indicated that there are three questions presented by this appeal. Actually there is only one question which is appealable under 12 U.S.C. § 1257(2), viz:

> Does 31 U.S.C. § 742,[1] which forbids a state to include interest on United States Government obligations in the computation of any tax other than a nondiscriminatory franchise or other nonproperty tax in lieu thereof imposed on corporations, forbid the inclusion of such interest in computing the nondiscriminatory franchise tax imposed on corporations under Minnesota Statutes 290.02?

This is the question that was litigated in this case and was decided in the negative by the Minnesota Supreme Court. In its Jurisdictional Statement, appellant has stated this same question in two different ways, in (c)(i) and (c)(iii), but it is still one and the same question.

Appellant has also stated a second question, in (c)(ii), namely:

> "(ii) Was the tax imposed by M.S.A. 290.02 on Appellant's privilege of existing and doing business as a corporation a property tax?"

[1] 31 U.S.C. § 742 reads as follows:

> Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, *except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations* and except estate taxes or inheritance taxes. (Emphasis supplied.)

That is not an appealable question under 12 U.S.C. § 1257 (2), as it merely involves the construction of the Minnesota statute, and does not draw in question the validity of the statute on the ground of its being repugnant to the Constitution or laws of the United States. The Minnesota Supreme Court has held that the statute does not impose a property tax,[2] and in the construction of a state statute, the state court's views are not reviewable by the Supreme Court.[3]

31 U.S.C. § 742 clearly permits the inclusion of interest on United States obligations in the computation of a nondiscriminatory franchise tax imposed on corporations.[4]

[2] Jurisdictional Statement, pp. A-12, 13, 14.

[3] *Michigan v. Michigan Trust Co.*, 286 U.S. 334 (1932).

[4] 31 U.S.C. § 742 reflects the position of this Court as enunciated in a number of decisions. For example, in *Werner Machine Co. v. New Jersey*, 350 U.S. 492 (1956), the Court sustained a New Jersey franchise tax based upon the corporation's net worth, which included the value of some federal bonds. The Court said:

> Appellant argues further that even if this is a franchise tax, it must fall because its effect is the same as if it had been imposed directly on the tax-exempt federal securities. Since the tax remains the same whatever the character of the corporate assets may be, no claim can be sustained that this taxing statute discriminates against the federal obligations. And since this is a tax on the corporate franchise, it is valid despite the inclusion of federal bonds in the determination of net worth. *This Court has consistently upheld franchise taxes measured by a yardstick which includes tax-exempt income or property, even though a part of the economic impact of the tax may be said to bear indirectly upon such income or property.* See, e.g., Society for Savings v. Coite, 6 Wall. 594, 18 L.Ed. 897; Provident Institution for Savings v. Massachusetts, 6 Wall. 611, 18 L.Ed. 907; Hamilton Co. v. State of Massachusetts, 6 Wall. 632, 18 L.Ed. 904; Home Ins. Co. of New York v. State of New York, supra; Educational Films Corp. of America v. Ward, supra; Pacific Co. v. Johnson, supra. (Emphasis added.)

And the Minnesota Supreme Court has clearly held that:

> [T]he tax involved in this case is . . . in fact, a franchise tax imposed upon the privilege of operating as a corporation. The inclusion of interest on Federal securities in determining net income of the corporation is used only as a measuring stick to compute the amount of a franchise tax due under Minn. St. 1971, § 290.02. As such, it is permissible under 31 U.S.C.A. § 742. (Jurisdictional Statement, pp. A-13, 14.)

Under these circumstances, where the federal law (31 U.S.C. § 742) is clear and its application to the Minnesota statute in issue is clear, there is, we submit, no substantial federal question presented by this appeal, and it should be dismissed.

Respectfully submitted,

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